

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
MARCH 30, 2017

Gambling Control Board Conference Room
Department of Public Safety
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, William McFarland, and Michael Graham

Commission Members Absent: Gary Reed and Alexander Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Betty Farr, Miles Greenleaf, Jaime Wood, and Zachary Matzkin

1. Call the Meeting to Order and Introductions: William Varney, Chair

2. Review and Approval of Minutes

Review and Approval of Decision and Orders

Commissioner McFarland made a motion to approve the minutes of November 8, 2016 as written. Commissioner Graham seconded. Vote 3-0.

Commissioner McFarland made a motion to approve the decision and order for Craig Hall complaint number 2016 MSHRC 21 as written. Commissioner Graham seconded. Vote 3-0.

Commissioner Graham made a motion to approve the minutes of November 17, 2016 as written. Commissioner McFarland seconded. Vote 3-0.

3. Review of Hearing Record for Chapters 9, 11 and 17

Mr. Jennings stated that Chapter 9 and the summary of comments were handed out. There was one change to page 6 which states "In all Maine Sire Stakes events, all starters have to be on the gate."

Commissioner Graham stated that he was opposed to this change. Commissioner McFarland agreed with Commissioner Graham. Commissioner Varney stated to leave it as it was. Mr. Jennings stated that the logic would be it would reduce the purses dramatically, and create additional non-betting races.

Mr. Jennings stated that Chapter 11 and the summary of comments were handed out. There were no comments received. He stated that he forgot to add NSAIDs for Chapter 9 and the cross references. He asked the Commissioners where they would like to go with this Chapter. All Commissioners agreed to adopt the chapter. There was a discussion on the NSAIDs in Chapter 11 whether to leave it out or put it back in. Commission Varney stated that the consensus of the Commission was to leave this paragraph out.

Mr. Jennings stated that Chapter 17 and the summary of comments were handed out. He stated that there were a few typo's in the chart. Page 10 is a new Class D and below Class D is brought in from the ARCI. He thinks this section should be in Chapter 11. He spoke with AAG, Randlett and in his view it did not change the impact of the meaning of the rule. Commissioners all support these changes.

Mr. Jennings stated that the part that says loss of purse and the horse is disqualified until the purse is paid. People would transfer the horse to someone else to make sure the horse didn't race to help the cause. He asked AAG, Randlett if this would constitute a substantive change. He said it would. Mr. Jennings stated that he could file another notice to get the language in there. Is there support from the Commission to go forward with this? There was a brief discussion on setting the horse down. Linwood Higgins stated that at the Meadowlands when you have purse authorization form

the last thing on the form it states that “Checks for overnight races, and only overnight races, will be released on a regular schedule each week without being held until the laboratory testing clearance is received. Any owner who receives a check and is later notified of a positive test for his or her horse must return the purse payment after receiving notice from the Commission. Refusal to return the payment will result in an indefinite suspension from racing. Your signature below indicates your reading and understanding of above.” Mr. Jennings stated that some jurisdictions say you cannot transfer to family. Commissioner Varney stated to Mr. Jennings to bring back some alternatives. Mr. Jennings asked if on page 9 under Class D if you want 30 & 15. Commissioner Varney stated that he would like to see it 30 & 30. Mr. Jennings stated that on page 15 you wanted to add in knowingly and willingly and get rid of expulsion and in section 19 to change the title to “Use of Racing Facilities” instead of grounds and add in knowingly and willingly and get rid of expulsion in that area too. Commissioner McFarland stated that he would like to address the loss of purse and he hopes we can fix this matter once and for all because they’re cheating all of those that are playing the game fair.

4. **Adjudicatory Hearings:**

AAG, Guay stated that there might be one item that is not for hearing today but it relates to the hearings. One of them as a result of the cobalt decision, there were some people who had their penalties stayed under cobalt other than the three individuals that the Commission needs to deal with. As he recalls what happened as a result of the Superior Court case, the three individuals who had positive cobalt tests had their sentences suspended, and other people who had cobalt positives approached the Commission and asked that their sentences be suspended as well until the cobalt decision came down. The cobalt decision came down and the Commission was found to be acting correctly. For the three people who had the cobalt stays those automatically on March 8, 2017 went away by action of the Court Decision. However, for the people where the Commission had voted to issue a stay you now have to vote to remove those stays. The proper motion would be to remove the stays for any cobalt cases that may have been awarded by the Commission and lift the stays for the cobalt cases and to allow credit for time served as arranged by the department. Commissioner Varney asked the time that they were on a stay does that count. AAG, Guay stated no. When the cobalt decision came out on March 8, 2017 maybe an individual or a couple of individuals said the Commission won so they would like to start serving their penalty. Commissioner Graham stated he wasn’t sure if he understands what he is saying. Why would they serve their time then when there is no racing? AAG, Guay stated that is something that has never been litigated. Commissioner Graham stated so if someone gets a penalty for 60 days on December 15th that they serve it so they really don’t serve anything. Is that correct? Commissioner Varney stated that he thinks that’s correct. Mr. Jennings stated that it is another discussion because one obvious strategy is to stall with your case if it’s a fall case. What you have said is a day is a day. The argument that has been presented by the licensees is that they can race in other jurisdictions but if they are under suspension they can’t. AAG, Guay stated that he would suggest you do it with a live case, but you might have to wait until December. Commissioner Varney stated why can’t we say racing days. AAG, Guay stated that you can do it in the decision and they can appeal it and we can go to court but you can’t just decide here. Commissioner Varney moved the motion as stated by AAG, Guay above. Commissioner McFarland seconded. Vote 3-0.

- a. **RE: Nancy Lamarre, Complaint Number 2015 MSHRC 062.** Ms. Lamarre did not return her purse of \$750.00 from July 19, 2015 at Scarborough Downs. She was instructed to return the purse by January 12, 2017 as stated in the Purse Repayment Required letter. AAG, Guay stated that the state is moving for dismissal of this complaint because Ms. Lamarre has paid

the purse. He opened up the hearing for Nancy Lamarre complaint number 2015 MSHRC 062. He dismissed the case with prejudice.

- b. **RE: Nicholas Diflorio, Complaint Number 2015 MSHRC 082.** Mr. Diflorio did not return his purse of \$937.50 from September 19, 2015 at Oxford Fair. He was instructed to return the purse by January 13, 2017 as stated in the Purse Repayment Required letter. AAG, Guay stated that Mr. Jennings has not asked for dismissal of this case but to continue the case because there is a payment agreement. Mr. Jennings stated that is correct. Mr. Diflorio and the department have reached an agreement on a payment plan and they will move to continue the case based on the execution of that. AAG, Guay continued the case and either hear the case if he doesn't pay or we will dismiss the case if he satisfies that judgement.
- c. **RE: Candace Brandstatter, Complaint Number 2016 MSHRC 08.** Ms. Brandstatter did not return her purse of \$360 from July 3, 2016 at Scarborough Downs. She was instructed to return the purse by January 13, 2017 as stated in the Purse Repayment Required letter. AAG, Guay stated that the purse has been satisfied therefore the issue for the hearing is moot. Mr. Jennings stated that is correct. AAG, Guay stated that the state is moving for the dismissal of this case. Mr. Jennings stated that is correct. AAG, Guay stated that based on the fact that the purse has been paid. He dismissed the case with prejudice.

5. Appeal of Presiding Judge Decisions:

AAG, Guay stated that he received a forwarded email at 4:55 p.m. last night. Evidently, Mr. Jennings received a request for continuance. He asked questions of Mr. Jennings. Mr. Jennings stated that neither Mitchell nor Ronald Cushing asked for a continuance. He subpoenaed to have witnesses come to the hearing today. There was no reason given from the Cushing's to not be present at the hearing today other than they were racing in New York. AAG, Guay stated that he is denying the motion for a continuance. He stated that he would hold the hearing without the Cushing's being present.

- a. **RE: Mitchell Cushing, Complaint Number 2016 MSHRC 29.** Mr. Cushing is appealing the October 31, 2016 decision of Presiding Judge Frank Hall, Jr. in which Judge Hall assessed a \$200.00 fine for failing to obey the instructions of a racing official during the post parade of the Fourth Race. AAG, Guay opened the hearing. He qualified the Commissioners. He noticed for the record that he received a forwarded email at 4:55 p.m. by Mitchell Cushing indicating that he would not be at the hearing today and is requesting a continuance. AAG, Guay asked questions of Mr. Jennings. Mr. Jennings stated that he has subpoenaed three witnesses for the hearing today and the notice was received on March 18, 2017. AAG, Guay stated based on the subpoenas being issued and sufficient notice, he denied the continuance. Mr. Jennings presented the following exhibits and moved for their admission. Exhibit 1, Notice of Hearing; Exhibit 2, Driver Application; Exhibit 3, Race Program; Exhibit 4, USTA Suspension; Exhibit 5, MSHRC Waiver; and Exhibit 6, MSHRC Appeal Form. AAG, Guay admitted the exhibits. Mr. Jennings called Judge Hall. AAG, Guay gave Judge Hall his oath. Mr. Jennings asked questions of Judge Hall. Judge Hall stated that he noticed that Mr. Cushing had the hand holds too far back and asked him to return to the paddock for equipment adjustment. Mr. Jennings called Ronald Merrill paddock judge. AAG, Guay gave Mr. Merrill his oath. Mr. Jennings asked questions of Mr. Merrill. Mr. Merrill stated that the hand holds are standard equipment on horses. He stated that Mr. Cushing returned to the paddock three times for adjustments. AAG, Guay asked for any closing statements. Mr. Jennings stated that he believes that Mr. Cushing did not obey the instructions of the judge. AAG, Guay closed the hearing for deliberations. Commissioner

Graham made a motion to uphold the judge's decision in this case. Commissioner McFarland seconded. AAG, Guay asked for a specific finding because Mr. Cushing may appeal it. He stated that the finding of fact would be that he disregarded an instruction on the first, second or third time. You need to specifically say what the specific activity was that he disobeyed. Commissioner Graham made a finding that Mitchell Cushing disobeyed the judges rules when he took the hand holds off the reins instead of taken them up as he was told. Commissioner McFarland agreed with Commissioner Graham's statement. Commissioner Graham made a motion to uphold the judge's decision. Commissioner McFarland seconded. Vote 3-0.

- b. **RE: Mitchell Cushing, Complaint Number 2016 MSHRC 30.** Mr. Cushing is appealing the October 31, 2016 decision of Presiding Judge Frank Hall, Jr. in which Judge Hall assessed a \$150.00 fine for poor sulky posture in the Ninth Race. AAG, Guay opened the hearing. He qualified the Commissioners. AAG, Guay asked Mr. Jennings to present his exhibits and move for admission. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Driver License Application; Exhibit 3, Race Program; Exhibit 4, USTA Suspension; Exhibit 5, Notice of Judge's Decision, Exhibit 6, Appeal Form, and Exhibit 7, DVD of race in question. AAG, Guay admitted the exhibits. Mr. Jennings asked questions of Frank Hall. They watched the video tape of the race. After watching the video, Commissioner Graham made a motion to uphold the judge's decision. Commissioner McFarland seconded. Vote 3-0. AAG, Guay denied the appeal.
- c. **RE: Ronald Cushing, Complaint Number 2016 MSHRC 32.** Mr. Cushing is appealing the October 19, 2016 decision of presiding Judge Frank Hall, Jr. in which Judge Hall assessed a \$100.00 fine for being inside pylons in the Eighth Race. AAG, Guay opened the hearing. He qualified the Commissioners. He noticed for the record that he received a forwarded email at 4:55 p.m. by Mitchell Cushing indicating that Ronald Cushing would not be at the hearing today and is requesting a continuance. AAG, Guay asked questions of Mr. Jennings. Based on the fact that there were subpoenas issued and sufficient notices, AAG, Guay denied the motion for a continuance. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer/Driver's License Application; Exhibit 3, Race Program; Exhibit 4, MSHRC Waiver; Exhibit 5, MSHRC Judge's Notice; Exhibit 6, MSHRC Appeal Form, and Exhibit 7, Video Tape of the Race. AAG, Guay admitted the exhibits. They watched the video of the race. Mr. Jennings asked questions of Mr. Hall. Mr. Hall stated that Mr. Cushing went inside the pylons around the 7/8 pole. AAG, Guay closed the hearing. Commissioner Graham made a motion to uphold the judge's decision. Commissioner McFarland seconded. Vote 3-0. AAG, Guay stated that the appeal is denied.
- d. **RE: Robert Lamarre, Complaint Number 2016 MSHRC 33.** Mr. Lamarre is appealing the November 17, 2016 decision of Presiding Judge Frank Hall, Jr. in which Judge Hall placed his horse "Juniata County" for causing interference in the Second Race. Robert Lamarre was present and representing himself. AAG, Guay explained the process about judge's appeals. He opened the hearing and qualified the Commissioners. He gave Mr. Lamarre his oath. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program-Bangor; Exhibit 4, Notice of Fine; Exhibit 5, MSHRC Waiver; Exhibit 6, MSHRC Appeal Form, and Exhibit 7, MSHRC Race in Question (DVD). AAG, Guay admitted the exhibits. There were no objections from both parties. AAG, Guay asked Mr. Jennings if he had any witnesses. Mr. Jennings called Frank Hall. AAG, Guay gave Mr. Hall his oath. Questions were asked of Mr. Hall by Mr. Jennings and Mr. Lamarre. Mr. Jennings called Pam Merrill. AAG, Guay

gave Ms. Merrill her oath. Questions were asked of Ms. Merrill by Mr. Jennings and Mr. Lamarre. Mr. Jennings called Mark Warren. AAG, Guay gave Mr. Warren his oath. Questions were asked by Mr. Jennings. Mr. Jennings called Eddie Davis. AAG, Guay gave Mr. Davis his oath. Mr. Jennings asked questions of Mr. Davis. AAG, Guay had a question of exhibit 4 & 5 for clarity. What was the notice to Mr. Lamarre? Mr. Greenleaf stated that was Mr. Lamarre's driver on both exhibits. Mr. Lamarre asked Mr. Greenleaf if he had any statements. Mr. Greenleaf stated no. AAG, Guay stated that they would watch the DVD. Mr. Jennings stated that there were 3 actions that constitute interference on the part of Dan Deslandes. The 3 judges that were presiding that day all saw something that indicated the race was under review. In the judges' view, those 3 actions constitutes interference and a reasonable outcome was to place the horse. State's exhibit 5 which is the waiver of hearing signed by Mr. Deslandes. He waived his right to have that decision heard in front of the judges. He also admitted to the violation charge and understood that he had forfeited his right to appeal to the Commission. After careful review of the tape, the state's position is that the judges' decision should be upheld. AAG, Guay asked Mr. Lamarre if he had any argument. Mr. Lamarre wanted to watch the race from the beginning. AAG, Guay asked whether or not on that section of track that was interference. They watched the tape. Mr. Lamarre had no more statements. AAG, Guay closed the hearing for deliberations. Commissioner Graham stated that it was very close. He had difficulty ruling against three people that saw it differently in real time. Commissioner McFarland agreed with Commissioner Graham but he has the greatest respect for what the judges have to do. Watching that video he stated that the whip may have caused some confusion and cause the horse to break. Commissioner Varney stated he is in a hard position. After watching the video, he doesn't think Mr. Lamarre's horse interfered with the other horse. All three Commissioners agreed that the finding of fact is that they did not find that Mr. Lamarre's horse caused the interference. AAG, Guay stated that based on that finding of fact, the appeal is granted.

6. Approval of the 2017 Judges List

The Commission will review the list of Judges for the 2017 racing year and determine whether it's appropriate to approve the list. Mr. Jennings stated that the Commission shall approve a list. Commissioner Varney asked for a motion. Commissioner Graham made a motion to approve the judges list conditional on them getting a license. Commissioner McFarland seconded. Vote 3-0.

7. Public Comment

Commissioner Varney asked for public comment. William Kasabauski addressed the Commission. He stated that he would like to see the horse set down for 30 days if there is a positive. He also stated that an amateur driver should be an amateur driver not someone with 30 horses. He would like to see some changes. Commissioner Varney stated that they are addressing some of these issues. He stated that there are criteria at the club where you race. Diann Perkins asked if they have started testing for out-of-competition testing. Mr. Greenleaf stated not yet.

8. Schedule of Future Meetings

April 28, 2017
May 19, 2017
June 23, 2017

9. Adjourn
1:15 P.M.